



GAIL FARBER, Director

COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

900 SOUTH FREMONT AVENUE
ALHAMBRA, CALIFORNIA 91803-1331
Telephone: (626) 458-5100
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ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

February 3, 2009

IN REPLY PLEASE
REFER TO FILE: **MP-6**

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**TUJUNGA WASH - PARCELS 58-1/2L, 60L,
772L, 773L, 774L, 775L, 780L, 781L, AND 786L
CONSENT TO ASSIGNMENT AND LEASE TERMINATION
AGREEMENT - LEASE AGREEMENT NO. 74571 BETWEEN
THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT,
PCS/BELLA VITA, LLC, AND ARCHSTONE
IN THE CITY OF LOS ANGELES
(SUPERVISORIAL DISTRICT 3)
(3 VOTES)**

SUBJECT

The action is to approve the Consent to Assignment and Lease Termination Agreement for Lease Agreement No. 74571, with PCS/Bella Vita, LLC, and Archstone, along Tujunga Wash in the City of Los Angeles.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Approve the Consent to Assignment and Lease Termination Agreement for Lease Agreement No. 74571 between the Los Angeles County Flood Control District, PCS/Bella Vita, LLC, and Archstone.
2. Instruct the Chairman to sign the Consent to Assignment and Lease Termination Agreement.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The purpose of the recommended action is to obtain your Board's approval of the Consent to Assignment and Lease Termination Agreement (Agreement) for Lease Agreement No. 74571 (Lease) between PCS/Bella Vita, LLC (PCS), and Archstone, who intends to acquire PCS' rights, title, and interest in the Lease. The Agreement will also provide the proposed assignee, Archstone, an option to terminate the Lease.

Implementation of Strategic Plan Goals

The Countywide Strategic Plan directs the provision of Fiscal Responsibility (Goal 4). The revenue from the Agreement will be used for flood control purposes.

FISCAL IMPACT/FINANCING

There will be no impact to the County General Fund.

If Archstone elects to terminate the Lease on or before August 5, 2009, they will be required to pay a termination fee of \$1,674,739.00, which was calculated on the present value of projected annual rents to be received over the remaining term of the Lease. When the termination fee was calculated, annual rent was \$138,991. The termination fee calculation assumes a lease termination date of August 5, 2009, a two percent Consumer Price Index annual increase, and a discount rate of ten percent. This termination fee will be deposited into the Flood Control District Fund.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The Los Angeles County Flood Control District (LACFCD) and 12729 Riverside, LLC (now PCS), entered into a 40-year Lease effective August 1, 2003, for vehicular parking, ingress and egress, and landscaping purposes along the south side of Tujunga Wash, located adjacent to 12629 Riverside Drive in the City of Los Angeles (Property), as shown on the attached map.

In November of 2006, PCS had entered into an Agreement of Purchase and Sale (Purchase Agreement) with Archstone for the Property. The Property is adjacent to the south side of Tujunga Wash, which Archstone will no longer have a need to lease for the future development of the Property. PCS requested the ability to cancel the Lease with the LACFCD but the Lease does not contain a cancellation provision for PCS.

The Honorable Board of Supervisors
February 3, 2009
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Upon the closing of the transaction contemplated by the Purchase Agreement, PCS will assign all its rights and delegate all its duties under the Lease to Archstone, and Archstone shall accept such rights and duties, effective upon the closing of the transaction. The Agreement will provide Archstone with the right to terminate the Lease on or before August 5, 2009, provided Archstone satisfies all the conditions defined in the Agreement.

The terms of the Lease require your Board's consent of the Agreement. County Counsel has reviewed and approved the attached Agreement as to form.

ENVIRONMENTAL DOCUMENTATION

On August 5, 2003, Synopsis No. 32, your Board found that leasing these parcels is categorically exempt from the provisions of the California Environmental Quality Act (CEQA). This proposed action of modifying the Lease is consistent with this finding.

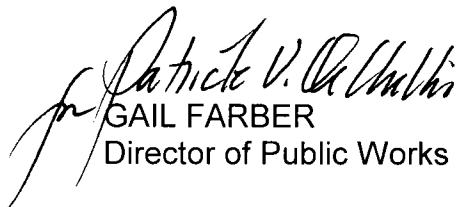
IMPACT ON CURRENT SERVICES (OR PROJECTS)

The Assignment allows for the joint use of LACFCD's right of way without interfering with the primary mission of the LACFCD.

CONCLUSION

Please return one adopted copy of this letter and the executed original Agreement to the Department of Public Works, Mapping & Property Management Division.

Respectfully submitted,


GAIL FARBER
Director of Public Works

GF:PAP:hp:mr

Attachments (2)

c: Auditor-Controller (Accounting Division-Asset Management)
Chief Executive Office (Lari Sheehan)
County Counsel

CONSENT TO ASSIGNMENT AND LEASE TERMINATION AGREEMENT
(Lease No. 74571)

THIS CONSENT TO ASSIGNMENT AND LEASE TERMINATION AGREEMENT (this “**Agreement**”) is entered into as of _____, 2009, by and between **LOS ANGELES COUNTY FLOOD CONTROL DISTRICT**, a body corporate and politic (“**District**”), **PCS/BELLA VITA, LLC**, a California limited liability company, formerly known as **12729 RIVERSIDE, LLC** (“**Tenant**”), a California limited liability company, and **ARCHSTONE**, a Maryland real estate investment trust (“**Archstone**”), with reference to the following Recitals:

RECITALS

A. District and Tenant are parties to that certain Lease Agreement dated August 5, 2003, (the “**Lease**”), pursuant to which District leases to Tenant certain property located in the City of Los Angeles, County of Los Angeles, State of California (collectively, the “**Premises**”).

B. Archstone, as purchaser, and Tenant, as seller, have entered into an Agreement of Purchase and Sale (as amended, the “**Purchase Agreement**”) dated November 30, 2006, with respect to certain real estate located in the City of Los Angeles and more particularly described therein (the “**Property**”). The Property is adjacent to the Premises.

C. At the closing of the transaction contemplated by the Purchase Agreement, Tenant proposes to assign its interest in the Lease to Archstone or an affiliate of Archstone (“**Purchaser**”), and Purchaser will become the tenant under the Lease.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Defined Terms. All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms as set forth in the Lease.

2. Consent to Assignment. District hereby consents to the assignment of the Lease from Tenant to Purchaser and agrees that upon such assignment, Tenant shall be fully released and discharged from all liabilities and obligations under the Lease.

3. Assumption of Obligations by Purchaser. Purchaser hereby agrees that, upon the assignment of the Lease to Purchaser, Purchaser shall assume all of Tenant's liabilities and obligations under the Lease and shall comply with and perform each and every covenant, condition and agreement of Tenant contained in the Lease.

4. Lease Termination. Purchaser shall have the right (the “**Termination Option**”), exercisable at any time following Purchaser's acquisition of the Property but in no event later than August 5, 2009, to terminate the Lease, effective as of the date specified in a written notice from Purchaser to the District, provided that each of the following terms and conditions is satisfied:

a. No Default. There shall exist no uncured default by Purchaser under the Lease.


- b. Notice. Purchaser shall have given the District at least thirty (30) days prior written notice of Purchaser intent to exercise the Termination Option.
 - c. Termination Fee. Purchaser shall have paid the District an early termination fee of \$1,674,739.00.
 - d. Restoring Premises. Purchaser shall have restored the Premises in accordance with the terms of the Lease, including but not limited to removal the asphalt along the Premises and the relocation of the fencing back to the property line between the Property and the Premises. Prior to commencing such work Purchaser shall obtain permits from the Los Angeles County Department of Public Works, Construction Division, Permits Section. Purchaser specifically acknowledges and agrees that such work shall be performed at Purchaser's sole cost and expense.
 - e. Landscaping. Purchaser shall have completed the landscaping of the Premises, specifically including but not limited to the installation of an irrigation system and the planting of trees, shrubs, groundcovers and mulch, to the reasonable satisfaction of District, and, to the extent applicable, in accordance with the Landscape Guidelines of the Los Angeles River Master Plan. Prior to commencing such work, Purchaser shall obtain District's prior approval of its design concept for the landscaping of the Premises by submitting plans to the Los Angeles County Department of Public Works (LACDPW), Mapping and Property Management Division and, shall obtain permits from LACDPW, Construction Division, Permits Section. Purchaser acknowledges and agrees that such work shall be performed at Purchaser's sole cost and expense.
5. Satisfaction of Lease Obligations. Upon termination of the Lease, the District and Purchaser shall be fully released and discharged from all liabilities or obligations under the Lease.
6. Severability. If any of the provisions of this Agreement shall be held by any court of competent jurisdiction to be unenforceable for any reason, such provision or provisions shall be deemed severable from and shall in no way affect the enforceability and validity of the remaining provisions of this Agreement.
7. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which, together, shall constitute one and the same document.
8. Authorization. Each individual executing this Agreement represents that it has all requisite power and authority to execute and deliver this Agreement on behalf of the entity for which it is signing, and by his or her signature, will bind such party to the terms of this Agreement.
9. Limitation of Liability. Archstone is a Maryland real estate investment trust and, in accordance with its declaration of trust, notice is hereby given that neither the trustees, officers, employees nor shareholders of Archstone assume any personal liability for obligations entered into by or on behalf of Archstone.

(REMAINDER OF PAGE INTENTIONALLY BLANK)

IN WITNESS WHEREOF, the LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic, by order of its Board of Supervisors, as caused this Agreement to be subscribed by the Chair of the Board and the seal of the DISTRICT to be affixed hereto and attested by its Executive Officer, and parties have hereunto subscribed their names, the date and year first above written.

TENANT:

PCS/BELLA VITA, LLC, a California limited liability company

By: 
Printed Name: Paul Jennings
Its: owner

By: _____
Printed Name: _____
Its: _____

ARCHSTONE:

ARCHSTONE,
a Maryland real estate investment trust

By: _____
Printed Name: _____
Its: _____

DISTRICT:

LOS ANGELES COUNTY FLOOD CONTROL DISTRICT
a body corporate and politic

By: _____

ATTEST:

Sachi A. Hamai, Executive Officer
of the Board of Supervisors of the County of Los Angeles

By: _____
Deputy

Approved as to Form:

RAYMOND G. FORTNER, JR.
County Counsel

By: _____

IN WITNESS WHEREOF, the LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic, by order of its Board of Supervisors, as caused this Agreement to be subscribed by the Chair of the Board and the seal of the DISTRICT to be affixed hereto and attested by its Executive Officer, and parties have hereunto subscribed their names, the date and year first above written.

TENANT:

PCS BELLA VITA, LLC, a California limited liability company

By: _____
Printed Name: _____
Its: _____

By: _____
Printed Name: _____
Its: _____

ARCHSTONE:

ARCHSTONE,
a Maryland real estate investment trust

By: K. Keene
Printed Name: Kenneth Keene
Its: Group Vice President

DISTRICT:

LOS ANGELES COUNTY FLOOD CONTROL DISTRICT
a body corporate and politic

By: _____

ATTEST:

Sachi A. Hamai, Executive Officer
of the Board of Supervisors of the County of Los Angeles

By: _____
Deputy

Approved as to Form:

RAYMOND G. FORTNER, JR.
County Counsel

By: _____

IN WITNESS WHEREOF, the LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic, by order of its Board of Supervisors, has caused this Agreement to be subscribed by the Chair of the Board and the seal of the DISTRICT to be affixed hereto and attested by its Executive Officer, and parties have hereunto subscribed their names, the date and year first above written.

TENANT:

PCS/BELLA VITA, LLC, a California limited liability company

By: _____
Printed Name: _____
Its: _____

By: _____
Printed Name: _____
Its: _____

ARCHSTONE:

ARCHSTONE,
a Maryland real estate investment trust

By: _____
Printed Name: _____
Its: _____

DISTRICT:

LOS ANGELES COUNTY FLOOD CONTROL DISTRICT
a body corporate and politic

By: _____

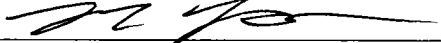
ATTEST:

Sachi A. Hamai, Executive Officer
of the Board of Supervisors of the County of Los Angeles

By: _____
Deputy

Approved as to Form:

RAYMOND G. FORTNER, JR.
County Counsel

By:  _____

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On January 6, 1987, the Board of Supervisors for the County of Los Angeles and ex officio the governing body of all other special assessment and taxing districts, agencies, and authorities for which said Board so acts adopted a resolution pursuant to Section 25103 of the Government Code that authorized the use of facsimile signatures of the Chair of the Board on all papers, documents, or instruments requiring the Chair's signature.

The undersigned hereby certifies that on this _____ day of _____, 20____, the facsimile signature of _____, Chair of the Board of Supervisors of the LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, was affixed hereto as the official execution of this document. The undersigned further certifies that on this date a copy of the document was delivered to the Chair of the Board of Supervisors of the LOS ANGELES COUNTY FLOOD CONTROL DISTRICT.

In witness whereof, I have also hereunto set my hand and affixed my official seal the day and year above written.

SACHI A. HAMAI, Executive Officer
of the Board of Supervisors
of the County of Los Angeles

By _____
Deputy

(LACFCD-SEAL)

APPROVED AS TO FORM

RAYMOND G. FORTNER, JR.
County Counsel

By  _____
Deputy